1. There are dicta in United States Supreme Court decisions, to the effect that prisoners have no rights. Yet, as the following statement by the National Native American Prisoners Rights Advocacy Coalition points out, "[United States] prisons, since their founding, have provided inmates with access to religion as an important part of rehabilitation." This situation with regard to indigenous prisoners in the United States is another matter.

2. Whether it be by outright denial of religious services, as in the State of Texas, or by more subtle means, as in the State of California, where Native American inmates are forced to cut their hair in accordance with prison rules, the fundamental human right of religious thought and practice of indigenous inmates in the United States is severely being affected.

3. There are no similar limitations on the practice of religion nor impediments to the access of priests, rabbis or ministers of other religions for inmates of other faiths. There is only denial of access and a growing intolerance toward indigenous spiritual leaders and healers. The racial and cultural prejudice against indigenous peoples in the United States, against their cultures, traditions and world views, is a matter of United States Supreme Court and federal and state prison policy.

4. The International Indian Treaty Council is honoured to present as its written intervention on the human rights of all persons subjected to any form of detention or imprisonment, the following statement written by the National Native American Prisoners Rights Advocacy Coalition, an indigenous non-governmental organization seeking the observance and protection of the religious rights of Native American inmates. The IITC joins in their call that the Special Rapporteur on religious intolerance examine the plight of Native American inmates in the United States, and issue appropriate recommendations to United States authorities.

ANNEX

Protection of the religious rights of Native American prison inmates

The National Native American Prisoners Rights Advocacy Coalition was formed in June 1995 in Boulder, Colorado. The NNAPRAC is a coalition of Indian Nations, organizations and concerned activists who are working within the United States prison systems. It includes the Native American Rights Fund, the National Congress of American Indians, the International Indian Treaty Council, the Navajo Nation, the Oglala and Rosebud Sioux Tribes, and the Native American Church of North America. The Co-Chairmen of this coalition are President Albert Hale of the Navajo Nation and President Ron Allen of the National Congress of American Indians. The primary purpose of the coalition is to seek increased protection for the free exercise of religion and culture for Native American prisoners in the corrections setting. It carries out activities at the national level in the fields of criminal justice, rehabilitation and human rights that are of paramount importance to Indian Nations. The human rights concern has been the lack of strong legal protection of Native religious practices in prisons. The ability to practise traditional native religions is paramount to the cultural survival of Native peoples.

For many years the paramount human rights problem of Native Americans who are incarcerated has been the denial of their rights to practise traditional Native American religions in federal and state prisons. This long-standing criminal justice problem, which implicates federally protected rights, was documented in congressional hearings as early as 1978 during the passage of the American Indian Religious Freedom Act. It was also documented in the oversight hearings on the problems in the free exercise of religion experienced by Native Americans held by the Senate Committee on Indian Affairs and by the House Subcommittee on Native American Affairs (1992-1993).

At present, Native Americans are seeking increased federal protection for the free exercise of religion because it is an essential component of the rehabilitation of Native offenders and of the cultural and spiritual well-being of the reservation communities to which offenders released or paroled from prison return.

American prisons, mandated by the principle of free exercise of religion, have since their founding provided inmates with access to religion as an important part of rehabilitation. Native American prisoners, whose numbers are highly disproportionate to the composition of Native Americans in the general population, have often been denied equal access.

Native spiritual practices are very important for the spiritual healing of the Native prisoners and it has proven to have been very successful for the rehabilitation of the mind, body and spirit. A recovery movement has been developing across the country for the past 25 years and a spiritual healing has evolved, especially in the prison systems. Until 1978 countless ceremonial practices were banned and religious structures and articles were destroyed in an effort to assimilate Native peoples into the dominant society. In 1978 Congress passed the American Indian Religious Freedom Act (AIRFA), intended to protect the right of American Indians to practise their traditional religions. AIRFA states that the policy of the United States Government is "... to protect and preserve for American Indians their inherent

right of freedom to believe, express and exercise the traditional religions ...." However, the United States Supreme Court, in its 1988 Lyng v. Northwest Indian Cemetery Protective Association decision, declared AIRFA was only a policy statement and refused to protect Native religious practices.

Imprisoned Native Americans have no legal protection under AIRFA to consistently practise their traditional religions. Sweatlodges, long hair worn in a traditional fashion, headbands, medicine bags, possession of sage, cedar and tobacco and other practices have been banned as "security risks" by one prison or another.

Passage of the 1993 Religious Freedom Restoration Act (RFRA), supported by a broad coalition of religious groups, provided some protections for Native religious practices in prisons. RFRA restored the "compelling interest test", requiring that Government not restrict religious practice unless there was a compelling interest to do so, which had been eliminated by the earlier Supreme Court decision Employment Division Oregon v. Smith (1990).

The Supreme Court struck down the Religious Freedom Restoration Act as unconstitutional on 25 June 1997 (City of Boerne, Texas, v. Flores). This decision adversely affects the religious and spiritual practices of all Native American prisoners in the United States prison system.

The outright denial of religious practices is tantamount to a denial of an opportunity for a recovery and a spiritual healing. Enforcement of and compliance with the law have not been uniform and lawsuits filed to enforce existing laws have resulted in contradictory decisions. Freedom of religion for Native prisoners has depended upon the whim of individual prison officials. Ignorance and lack of awareness should not be an excuse for systematically and arbitrarily denying religious rights, then justifying those denials on the basis of security concerns. Hypothetical situations should not be conjured up and presented as fact. These racist attitudes or judgements should not be the basis for arbitrarily and/or capriciously denying basic human rights.

There are lawsuits pending and complaints filed against the State Department of Corrections in Texas, California, New York, Indiana, Wisconsin, Minnesota, Nevada, Missouri, Washington, Oregon, Pennsylvania and Arizona.

Traditional religious practices help imprisoned Native Americans. The traditional religious practices and ceremonies such as the cleansing and purification ceremonies (sweatlodges) have proven to be very successful in the positive changes in attitude, behaviour and personality. The sweatlodges teach respect, responsibility and sobriety. The pipe ceremonies and talking circles and individual spiritual counselling have also proven very effective in spiritual healing, renewed dignity and cultural pride.

The coalition would request the United Nations Special Rapporteur on religious intolerance to examine and explore the violations of the religious and cultural rights and practices of the original peoples of the United States of America and to present his findings to the Commission so that religious intolerance may be eliminated.